



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Devres, Inc.--Reconsideration

File: B-228909.2

Date: April 1, 1988

DIGEST

Request for reconsideration that does not show factual or legal error, nor provide previously unavailable information affecting conclusions reached, does not provide basis for reversal or modification of prior decision.

DECISION

Devres, Inc., requests reconsideration of our decision Devres, Inc., B-228909, Dec. 30, 1987, 87-2 CPD ¶ 644. We affirm our prior decision.

Devres protested the decision of the Agency for International Development (AID) to issue a delivery order to a competing firm rather than to Devres under its indefinite-quantity contract (IQC) No. PDC-1406-I-00-7013-00. In this procurement, AID first considered Devres for award, but was unable to reach an agreement with it on the specific terms of the proposed delivery order. Accordingly, AID solicited alternative proposals from other firms holding IQCs for the type of services sought. Ultimately, the delivery order was awarded to one of the other firms solicited for a price significantly lower than that proposed by Devres.

Devres protested that AID failed to enter into good faith negotiations with it; improperly solicited proposals from the other firms; and disclosed proprietary information to the awardee. We denied Devres' protest on the first two matters, concluding that AID reasonably determined that Devres' proposed price was not fair and reasonable and therefore acted properly in seeking alternative proposals from other firms. We dismissed Devres' charge that AID personnel disclosed proprietary information since Devres failed to provide evidence supporting that allegation.

By letter dated January 20, 1988, Devres requests reconsideration on the bases that: our decision was premature in that we did not await conclusion of an AID

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Inspector General investigation concerning its allegations; our decision "construed all disputed facts in favor of AID"; and our decision failed to consider the adequacy of AID regulations governing issuance of IQC delivery orders. Devres subsequently filed additional submissions dated March 10, and March 16, 1988, supplementing its request.^{1/}

In response to Devres' assertion that our decision was premature, we contacted AID to determine the status of the Inspector General investigation and to establish whether there was information now available which we did not previously consider. AID responded by commenting generally on the issues raised in Devres' request for reconsideration and specifically advising us that the AID Inspector General completed his investigation and issued a report on December 21, 1987. That report concluded:

" . . . there is no evidence to support the allegation that [AID's negotiator] furnished proprietary information from one contractor's files to another contractor. There is no reason to believe any violation of ethics or law occurred. . . ."

Following AID's response, Devres submitted additional correspondence along with documents it obtained under the Freedom of Information Act. Notwithstanding the Inspector General report, Devres' most recent submissions continue to assert that disclosure of information and/or other improprieties occurred. We have considered Devres' arguments along with the documents it submitted. Other than Devres' speculative statements, we find no basis for concluding that the AID Inspector General report is erroneous.

Devres next requests reconsideration on the basis that our decision "construed all disputed facts in favor of AID" and asks that we reconsider our decision under recent amendments to our Bid Protest Regulations which now provide for formal fact-finding procedures. 52 Fed. Reg. 46,445 et seq. (1987) (to be codified at 4 C.F.R. Part 21).

Devres, asserting that we applied a "blanket presumption" that the facts as reported by AID were correct, apparently

^{1/} Most of the material in the two latter submissions merely restate Devres' previous arguments concerning AID's actions in negotiating with Devres and subsequently soliciting alternative proposals. Accordingly, we do not specifically refer to Devres' most recent characterization of arguments previously made.

fails to understand that a protester bears the burden of submitting sufficient evidence to prove its case. Sun Enterprises, B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ 384. We did not engage in any presumptions; we simply found, after considering Devres' submissions, that Devres had not met its burden of proving that AID violated any procurement statute or regulation in awarding the contested delivery order. In its request for reconsideration and subsequent correspondence Devres has not identified any legal or factual error our Office made in reaching that conclusion. Moreover, the new fact-finding procedures are applicable only to protests filed on or after January 15, 1988. 52 Fed. Reg. 46,445. Devres' protest was filed on August 28, 1987.

Finally, Devres requests reconsideration on the basis that our initial decision did not address the adequacy of AID's regulations concerning issuance of delivery orders under IQCs. Specifically, in its initial request for reconsideration, Devres states that "AID has no written procedures defining the scope of a contracting officer's authority for negotiating an IQC delivery order and no written procedures setting out methods and steps to be followed in an award." Devres' supplementary correspondence further asserts that, since there were no regulations which expressly authorized the AID contracting officer to request alternative proposals, such solicitation was prohibited.


Devres first raised the issue of allegedly inadequate regulations in its comments following the bid protest conference held in our Office on November 10, 1987. Since the issue was not raised in its initial protest, we did not specifically address it in our decision. Our bid protest procedures do not permit piecemeal presentation of protests. Atlas Trading and Supply Company, Inc., B-227164, Aug. 10, 1987, 87-2 CPD ¶ 146. Since the issue was not properly raised in the initial protest, it is not a valid basis for reconsideration. Tek-Lite, Inc.--Reconsideration, B-227843.3 et al., Nov. 6, 1987, 87-2 CPD ¶ 455.

Notwithstanding the untimeliness of the matter, we find Devres' assertion that AID has "no written procedures" surprising. AID has provided our Office with a copy of its Contract Information Bulletin 87-9 titled "Uniform Procedures for Issuance of Delivery Orders Under Indefinite Quantity Contracts." This document is published by AID as internal guidance for its contracting personnel and it establishes specific steps to be followed in procuring services through IQC delivery orders. Devres is clearly aware of this document since it displayed a copy of it at the bid protest conference and has quoted from it extensively in its correspondence with our Office.

Regarding Devres' arguments that AID's solicitation of alternative proposals was prohibited by the lack of regulations specifically permitting such solicitations, our prior decision held that AID's action in soliciting alternative proposals was clearly proper after it determined that Devres' proposal was unacceptable. 87-2 CPD ¶ 644 at 6. We are unpersuaded by anything Devres has submitted that our conclusion on this issue is erroneous.

It is a fundamental principle that government contracting officers are authorized--as well as required--to enter into contractual relationships that are in the best interests of the government. Federal Acquisition Regulation (FAR) § 1.602 (FAC 84-5). Further, in meeting their responsibility to safeguard the government's interests, contracting officers are to be granted "wide latitude to exercise business judgment." FAR, § 1.602-2. We believe the AID contracting officer's actions in seeking alternative proposals after determining Devres' proposal was not in the government's best interests were consistent with the broad authority granted. Since Devres has not identified any statute or regulation which prohibited that action, we find no merit in its arguments on this issue.

To obtain reversal of a decision upon reconsideration, the requesting party must convincingly show that the decision is based on factual or legal errors or must provide previously unavailable information that warrants reversal. Devres has not done so. Accordingly, our prior decision is affirmed.

for 
Comptroller General
of the United States